

CLERK OF COURT
CLERK OF COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of the application of,

ABRAHAM K. TAMATEY
Petitioner,

05-11528WGY

Referred to MT LT Sorden

Petitioner/ Plaintiff,

v.

Michael Chertoff Secretary of Department of Homeland Security.
Bruce Chadbourne Interim Field office Director of Detention and
Removal, Boston Field office Bureau of Immigration and Customs
Enforcement, Department of Homeland Security.
Thomas M. Hodgson, Sheriff Bristol County House of Correction

Respondents/ Defendants

PETITION FOR A WRIT OF HABEAS CORPUS

PURSUANT TO 28 U. S.C.: 2241

Now comes ABRAHAM K. TAMATEY (here in after "MR TAMATEY" Petition
er') and here by petitions this court for a writ of Habeas Corpus
to remedy his unlawful detention by Respondents and Allow for
relief stated in his "Prayer for Relief", Infra Petitioner's
Brief.

PARTIES

1. Petitioner, ABRAHAM TAMATEY has been physically continuousl
y in the U.S. Immigration custody since January 27 2004, and is a
native and citizen of Ghana. On or about April 28 2004. He was
ordered removed back to Ghana. On or about January 27 2004, he wa
was taken into Immigration custody by members of the Bureau of

- the Immigration and custom Enforcement for over six (6) months
2. RESPONDENT Michael Chertoff is the secretary of Department of Homeland Security of the United States of America (here in after "DHS), and is responsible, for the administration of ICE and the Implementation, ~~and~~ Enforcement of the Immigration Laws. As such he is the ultimate legal custodian of the Petitioner.
 3. Respondent Bruce Chadbourne is the Interim Field office Director for Detention and Removal Boston Field, Bureau of Immigration and Customs Enforcement Department of Homeland Security. AS, such as, he is the highest rankling local ICE official who has immediate custody of petitioner. Respondent Department~~s~~ of Homeland Security is the agency in charge with implementing and enforcing the Immigration Laws.
 4. Respondent Thmas M.Hodgson Sheriff Bristol county House of Correction has immediate custody of petitioner.

CUSTODY

Petitioner is detained at the Bristol county House of Correction in North Dartmouth Massachusetts.

ICE has contracted withh Bristol county House of correction to house Immigration detainees.

Mr TAMATEY HAS ALWYS BEEN under the direct complete and their agents.

JURISDICTION

This action arises under the constitution of the United States the Immigration and Nationality Act of (INA") 8 U.S.C.[1101 et seq :as amended by the Illegal Immigration. Reform and Immigration Responsibility Act of 1996("IIRIRA"), Pub. L. No 104-208. 110 Stat. 1570 and under 28 U.S.C.(2241, Act 1) 9, CI.2 of the United STATES. Constitution ("Suspension Clause"), and 28 U.S.C.) 1331, as petitioner is presently in custody under color of the authority of the United States, and as such custody is in violation of the constitution laws, or treaties of the United States see Zaduydas v. Davis 533 U.S. 678 (2001): Carranza v. INS, 277 F.3d 65 (1st Cir. 2002) (following enactment of IIRIRA, federal courts retain subject matter jurisdiction over habeas corpus petitioner.

VENUE

Venue lies with the District of Massachusetts because Mr. TAMATEY is currently detained at Bristol county house of correction in North Dartmouth Massachusetts Venue is also proper because Petitioner is in the custody of Respondent Bruce Chadlbourn. ICE Interim field office Director for Massachusetts. See 28 U.S.C.) 1391.

EXHAUSTION OF REMEDIES

Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme court decision in Zadvydes v. Supra the Department of Justice (here in after "DOJ:") issued regulations

governing the custody of aliens ordered removed. Petitioner Mr. Tamatey was ordered removed from the United States by Immigration Judge on April 28 2004. On December 3rd 2004 the Board of Immigration Appeals denied his appeal, (Exhibits 2/2.) Mr. Tamatey requested a custody Review Determination (here in after "CRD ") with the local ICE office at the 90- days interval of detention subsequently with ICE Headquarters Post Order Detention Unit (here in after "NOPDU") at the 180 days interval of his detention. (Exhibits 3). He submitted his first custody request on or about March 3rd 2005 (Exhibits 3) and it was denied. A second application was filed on or June 3rd 2005 with similar negative result. Perhaps due to the uneven practice of following the detailed procedures for review see 8 C.F.R.) 1241. 13 et seq. No statutory exhaustion requirements apply to petitioner claim of unlawful detention. Mr Tamatey is eligible to file the instant petition by the mere fact that he has been detained for longer than six (6) Months without being deported. Zadvydas, supra see also Rowe v. INS 45 F. Supp 2 d 144 (Mass 1999). He has exhausted all remedies and is not eligible for nor is he requesting any stay of deportation under INA § 241 (c) (2) 8 U.S.C. § 1231 (2) (c). His Immigration case was initially ended December 3rd 2004, when he was ordered removed. As such has exhausted all administrative remedies and is therefore eligible to argue additional arguments as he may deem necessary.

STATEMENT OF FACTS

Mr. Tamatey entered the United States on Jan. 27th 2002 on April 28th 2004 his application for Asylum and withholding of removal was denied by an Immigration Judge. The BIA denied his appeal on December 3rd 2004. He has been in Immigration custody and detention with a final order since then for a period of six (6) months INS FIRST Reviewed Mr. Tamatey's detention status on or about February 25th 2005 after the 90-day removal period pursuant to past-order Review procedures at 8C.F.R. § 241.4.. In a letter dated February 25th 2005 ICE denied his request for release, stating that ICE have been making attempts to repatriate petitioner, by requesting a travelling document from the Government of Ghana. They indicated that the Government of Ghana regularly approves cases for removal and there is no indication at this time that your case will not be approved. As result of the continued detention, Mr. Tamatey's case was transferred to the Headquarter Post Detention Unit (HQPDU). They did not send me letter stating that any case have been transferred to the headquarters. ICE has offered no evidence to suggest that removal in petitioner's individual case is reasonable foreseeable now.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

In Zadvydas The Supreme Court held that 8 U.S.C. § 1231(a) (6) when "read in light of the constitution demands an alien's post-removal detention to a period reasonable necessary to bring about the alien's removal from the United States" Id ;121 S. Ct. at

2498. A Habeas Court must [first] ask whether the detentions in question exceed a period reasonably necessary to secure removal. ID at 2504, if the Individual's removal is not reasonably foreseeable "the court should hold continued detention unreasonable and no longer authorized by statute " Id.

After six (6) months the Government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonable foreseeable future",

See Zhou v. Farguharson, 2001 U.S. dist LEXIS 18239* 2-*3 (D. Mass Oct. 19 2001) (Quoting and summarizing Zadvydas).

Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the Government's burden to establish that an alien petitioner will be deported within the reasonably foreseeable future. See Thompson v. INS

2002 U.S. Dist Lexis 23936 (E.D, La Sept. 16 2002) Government failed to show alien's deportation to Guyana was reasonably foreseeable where Government offered historical statistic of repatriation to Guyana but failed to show response from Guyana on the application for travel document that INS and the petitioner had requested): Kacanic v. Elwood 2001 U.S. Dist Lexis 21848

at * 14 (E.D, Penn. Nov. 8th 2002) Government's reliance on data concerning removal of aliens to Yugoslavia did not satisfy

Zadvydas because Government failed to give information about the number of aliens that were denied travel document) (Ablahad

V. Ashcroft 2002 U.S. Dist. LEXIS 17405 at *4 (N.D. Ill. Sept 6th 2002) (evidence that aliens have been deported to petitioner's country is not enough to carry the Government's burden under Zadvydas) . Rather, for the Government to meet his burden of

showing that an alien's repatriation is reasonably foreseeable if it must provide some meaningful evidence particular to the Individual petitioner's case. Compare Thompson, Kacianic and Abladah with Khan v. Fasano, 194 F. Supp.2d 1134 (S.D. Cal 2001). An alien who has been detained beyond the presumptive six months should be released where the Government is unable to present documented confirmation that the foreign Government at issue will agree to accept the particular individual in question. See Aghada v. Ashcroft, 2002 U.S. Dist Lexis 15797(1). Mass August 22sd 2002)(court "will likely grant" habeas petition after 14 months if ICE "is unable to present document confirmation that the Nigerian Government has agreed to [petitioner's] REP repatriation") Zhoai 2001 U.S. Dis. Lexis 18239, Abdu v. Ashcroft 2002 U.S. Dis. LEXIS 16129 LEXIS 19050 at* 7(W.D.Wash February 28th 2002): Mohamed v. Ashcroft 2002 U.S. Dist LEXIS 16129 at * 7(W.D. Wash April 15th 2002.)(Quotation omitted).

CLAIMS FOR RELIEF

1. STATUORY VIOLATION

Petitioner re-alleges that continued detention by the respondents violates INA § 241(a)(6), as interpreted in Zadvydas that ~~P~~petitioner's six months : presumptively reasonable period for continued effort passed months ago for the reasons outlined above, petitioner's removal to Ghana is not reasonably foreseeable. The Supreme Court held in Zadvydas that the continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonable and in violation of INA § 241.

2. SUBSTANTIVE DUE PROCESS VIOLATION

Petitioner continued detention violates his right to substantive due process by depriving him his core liberty interest to be free from bodily restraint. Government's interest in detaining petitioner in order to effect his deportation, does not exist if Mr. Tamatey cannot be deported. The Supreme Court in Zadvydas thus interpreted INA § 241 to allow continued detention only for a period reasonable necessary to secure the alien's removal because any other reading would go beyond the Government's articulated interest the alien's removal.

3. PROCEDURAL DUE PROCESS VIOLATION

Under the due process clause of U.S. Constitution an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. The petitioner in this case been denied that opportunity as there is no administrative mechanism in place for the petitioner to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates Zadvydas.

PRAYER FOR RELIEF

Wherefore petitioner Prays that this court may grant the following relief;

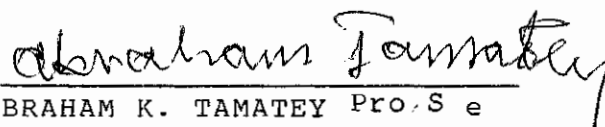
1. Assume jurisdiction over this matter.
2. Grant Petitioner a Writ of Habeas Corpus directing the Respondents to immediately release Petitioner from custody;

3. Order Respondents to refrain from transferring the petitioner out of the jurisdiction of ICE Boston District Director during the pending of these proceedings and while petitioner while the petitioner remains in Respondent;s custody and;

4. Grant any other and further relief which the court deem joint and proper.

I, affirm under penalty of perjury that the forgoing is true
and correct.

Respectfully Submitted this 17th day of June 2005


ABRAHAM K. TAMATEY Pro. S e
Bristol County Sheriff Office
400 Faunce Corner Road
North Dartmouth MA. 02747.

CERTIFICATE OF SERVICE

I, Abraham K. Tamatey, Certify that a true copy of the above document (petition for Writ of Habeas Corpus) together with attached documents was served on 17th day of June 2005, upon the following;

Frank Crowley
Special Assistant U.S. Attorney
Dept. of Homeland Security
Post Office Box 8728
Boston, MA. 02114.

By placing a copy of the above in the mail system at the facility where I am detained.

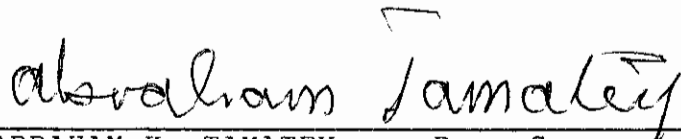

ABRAHAM K. TAMATEY Pro Se
Bristol County Sheriff Office
400 Faunce Corner Road
North Dartmouth MA. 02747.

Exhibit ①

IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203-0002

In the Matter of:

Case No: A96-413-059

TAMATEY, ABRAHAM K.

Applicant

IN ASYLUM-ONLY PROCEEDINGS

On Behalf of the Applicant

On Behalf of the DHS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Apr 28, 2004 and is issued solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

ORDER: It is hereby ordered that the applicant's request for:

☐ 1. Asylum is:

☐ Granted

☐ Withdrawn

☒ Denied

☐ 2. Withholding of Removal under INA 241(b)(3) is:

☐ Granted

☐ Withdrawn

☒ Denied

☐ 3. Withholding of Removal under the Convention Against Torture is:

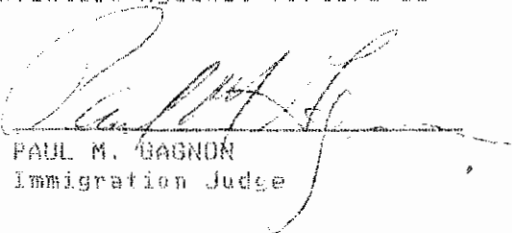
☐ Granted

☐ Withdrawn

☒ Denied

☐ 4. Deferral of Removal under the Convention Against Torture is granted.

Date: Apr 28, 2004


PAUL M. GAGNON
Immigration Judge

APPEAL: ~~NOTED~~ *by to product*

APPEAL DUE BY: *May 2, 04*

**U.S. Department of Justice
Executive Office for Immigration Review**

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A96-413-059 - Boston

Date: DEC 03 2004

In re: TAMATEY, ABRAHAM K.

IN ASYLUM PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jensen, Thomas A.

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 1003.1(e)(4).



FOR THE BOARD



U.S. Department of Justice

Exhibit

(2)

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Jensen, Thomas A.
805 15th Street, N.W.
Suite 700
Washington, DC 20005-0000

Office of the District Counsel/BO
P.O. Box 8728
Boston, MA 02114

Name: TAMATEY, ABRAHAM K.

A96-413-059

Date of this notice: 12/03/2004

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "F. F. Krider", is located below the word "Sincerely,".

Frank Krider
Chief Clerk

Enclosure

Panel Members:
MOSCATO, ANTHONY C.



U.S. Department of Homeland Security
Immigration & Customs Enforcement
Detention & Removal Operations
New England Field Division

Exhibit (3)

JFK Federal Building
Government Center
Boston, MA 02203

TAMATEY, Abraham A96413059
C/O BRISTOL COUNTY HofC

Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of the Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to the reviewing officials.

You are a native of and a citizen of Ghana who entered into the United States on January 27, 2004 as an Asylum applicant. On May 28, 2004 you were ordered removed from the United States by an Immigration Judge. On December 03, 2004 the Board of Immigration Appeals affirmed the Immigration Judges decision in your case.

Subsequent to receipt of your final order of removal ICE has been making attempts to repatriate you by requesting a travel document from the Government of Ghana. The Government of Ghana regularly approves cases for removal and there is no indication at this time that your case will not be approved.

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with the ICE's efforts to remove you by taking whatever actions the ICE requests to effect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

If you have not been released or removed from the United States by 06-03-05, jurisdiction of the custody decision in your case will be transferred to the Headquarters Post Order Unit (HQPDU), 801 I St. NW, Washington, DC 20536. HQPDU will make a final determination regarding your custody.

A handwritten signature in black ink, appearing to read "B. E. Chadbourne".

Bruce E. Chadbourne
Field Office Director

02-25-05
Date